

IN THE

**Supreme Court of the United States**

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DONALD J. TRUMP, et al.,  
Applicants,

v.

CASA, INC., et al.,  
Respondents.

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DONALD J. TRUMP, et al.,  
Applicants,

v.

STATE OF WASHINGTON, et al.,  
Respondents.

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DONALD J. TRUMP, et al.,  
Applicants,

v.

STATE OF NEW JERSEY, et al.,  
Respondents.

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**On Applications for Partial Stays of the Injunctions Issued by  
the United States District Courts for the District of Maryland,  
the Western District of Washington, and the District of Massa-  
chusetts**

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**BRIEF OF *AMICUS CURIAE*  
PROFESSOR JAMES E. PFANDER  
IN SUPPORT OF NEITHER PARTY**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Amicus curiae James E. Pfander, the Owen L. Coon Professor at Northwestern University Pritzker School of Law, teaches federal courts and civil procedure and has just completed a co-authored article on the history of non-party protective relief, focusing on patent revocation or annulment proceedings. See James E. Pfander & Mary E. Zakowski, *Non-Party Protective Relief in the Early Republic: Judicial Power to Annul Letters Patent*, 120 Nw. U.L. Rev. \_\_ (forthcoming 2026) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5163765](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5163765). In addition, Pfander has written widely on federal judicial remedial authority, often focusing on the history of judicial practice in the early republic. See, e.g., James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of Ex parte Young*, 72 Stan. L. Rev. 1269 (2020).

The Government’s application for a stay invites an assessment of whether federal courts may constitutionally issue non-party protective relief in the form of a universal injunction. An account of patent revocation litigation under the Patent Act of 1793, ch. 11, § 10, 1 Stat. at 323, may assist the Court if it reaches that question. Early patent cancellation practice indicates that non-party relief was an accepted feature of federal judicial power in the early republic; it remains part of federal judicial power today. In seeking to clarify the history surrounding the issuance of such relief and refraining from any discussion of the merits of the injunctive relief at issue in these proceedings, amicus files this brief in support of neither party.

### INTRODUCTION AND SUMMARY OF ARGUMENT

Much of the debate over the constitutional power of federal courts to grant universal injunctive or non-party protective relief has focused on lessons drawn from historical practice. Compare Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417 (2017) with Mila Sohoni, *The Lost History of the “Universal” Injunction*, 133 Harv. L. Rev. 920 (2020). But with its emphasis on universal forms of injunctive relief, the scholarly literature has largely ignored forms of adjudication that arose outside the courts of equity and led to judgments and decrees resolving issues once and for all and affecting the rights of non-parties.

One such form of adjudication, patent cancellation proceedings under the Patent Act of 1793, ch. 11, § 10, 1 Stat. 318, 323, may deserve closer attention in the debate over historical practice. Congress conferred power on the federal courts, in a suit brought by any person, to “repeal” an invention patent as a general matter. *Id.* at 323. If successful, such a suit annulled the grant and foreclosed the patent holder from enforcing the patent against anyone, including non-parties to the cancellation

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<sup>1</sup> Under Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae made a monetary contribution to its preparation or submission.

litigation. Based on English practice under the writ of *scire facias*, patent cancellation proceedings were evidently designed and administered with this broad conception of judicial power in mind. Congress thus approved and the federal courts exercised power to grant cancellation and nullification relief that would protect the suitor and any other artisans or manufacturers who were threatened by enforcement of an invalid patent.

During the nineteenth century, “equitable remedies . . . [would take] the place of *scire facias* for the cancellation or annulment of patents on inventions and patents to land.” Burke Shartel, *Federal Judges: Appointment, Supervision, and Removal: Some Possibilities under the Constitution*, 28 Mich. L. Rev. 870, 884–85, 884 n.38 (1930). Similar migration occurred in other remedial contexts as legal relief in the form of *mandamus*, *certiorari*, and prohibition came to inform the federal exercise of equitable power. Pfander & Wentzel, *Common Law Origins*, *supra*, at 1319-33.

For this reason, it makes little sense to define remedial power in federal equity solely by reference to the isolated practice of the High Court of Chancery in 1789. *Cf. Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308 (1999). Changing conceptions of the adequacy of traditional legal remediation necessitate an adjustment of breadth of equitable power. Pfander & Wentzel, *supra*. Or, as Professor Sam Bray explained, the “gap between equity’s past and present” does not invariably doom federal equitable power; sometimes the gap requires that a “translation . . . be made.” Bray, *Multiple Chancellors*, *supra*, at 423. The non-party protective remedies available in early patent revocation proceedings were translated in the nineteenth century into universal equitable relief and remain in place today.

## ARGUMENT

In the Patent Act of 1793, Congress authorized federal courts to hear suits in the nature of *scire facias* to “repeal” an invention patent. 1 Stat. 318, 323. Such relief, when granted, protected both the party initiating the proceeding and all other members of the public who may have had an interest in practicing the invention in question. In time, the patent revocation power migrated to federal courts of equity and retained its non-party protective character. *See generally* Pfander & Zakowski, *supra*, at 40-48. The adjudication of patent claims suggests that, as a matter of historical understanding, federal courts were empowered to grant forms of relief that extended to and conferred benefits upon non-parties.

In recounting federal judicial power to nullify patents for the benefit of all, Part I of the argument provides an overview of English practice on the writ of *scire facias* and its impact on patent litigation in the United States during the founding era. Part II describes practice under the Patent Act of 1793. Part III summarizes the way that non-party protective practice migrated to federal courts of equity and was eventually incorporated into federal judicial oversight of patent cancellation today. Part IV

briefly discusses the way history shapes this Court’s approach to defining the scope of federal equity today.

## I. Relief in the Nature of *Scire Facias*: Revocation for the Benefit of All

The issuance of a writ of *scire facias* initiated suit in the Petty Bag Office, also known as the common law or Latin “side” of the High Court of Chancery, to invalidate letters patent in proceedings triable to a jury as an action at law.<sup>2</sup> See Thomas Campbell Foster, *A TREATISE ON THE WRIT OF SCIRE FACIAS* 217 (1851). The choice of the Petty Bag Office as the site of litigation reflects the fact that the enrolled records of letters patent were kept there. Thus, the issuance, recordation, adjudication of legality, and cancellation of letters patent were seen as the responsibility of the Chancellor, acting at law instead of in equity.<sup>3</sup>

If the Chancellor ruled against the patent’s validity, the remedy was dramatic and potentially far-reaching. One can see that impact in the form of words used to describe the cancellation remedy and in the physical actions taken to effectuate the remedy. The stated goal of the writ was to ensure that invalid letters patent be “revoked, cancelled, vacated and disallowed, annulled, void and invalid, and be altogether bad and held for nothing.” W. M. Hindmarch, *TREATISE ON THE LAW RELATIVE TO PATENT PRIVILEGES FOR THE SOLE USE OF INVENTIONS* 259 (1847). That required both the destruction of the patent itself and an amendment to the enrolled records. *Id.* at 234. As for the records, cancellation occurred by “drawing strikes through [the enrolment of the patent] like a lettice.” *Id.* at 261. Then, “the Master of the Rolls, as keeper of the records of the Court, [would] sign[] his name in the margin of the roll opposite the enrolment of the patent . . . to be cancelled.” *Id.* As for the patent itself, “[t]he cancellation [was] effected by cutting or tearing the Great Seal from the instrument.” *Id.* at 260. See also Foster, *supra*, at 247.

One can see the broad ramifications of patent cancellation by writ of *scire facias* in the eighteenth-century case of *Rex v. Arkwright*, 1 Carp. P.C. 53 (K.B. 1785).<sup>4</sup> The case was brought in the name of the Crown to invalidate Arkwright’s patent of

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<sup>2</sup> Letters patent or open letters were used to confer a broad range of rights, including market charters (monopolies), land grants, offices or commissions, and eventually monopoly rights to market an invention. See Pfander & Zakowski, *supra*, at 21-22. See generally; E. Wyndam Hulme, *Privy Council Law and Practice of Letters Patent for Invention from the Restoration to 1794*, 33 L.Q. Rev. 63, 183–84 (1917).

<sup>3</sup> Blackstone held that, “[the high court of chancery] has its name of chancery, cancellaria, from the judge who presides here, the lord chancellor, or cancellarius; who Sir Edward Coke tells us, is so termed a cancellando, from cancelling the king’s letters-patent when granted contrary to law, which is the highest point of his jurisdiction.” WILLIAM BLACKSTONE, 3 COMMENTARIES ON THE LAWS OF ENGLAND 46 (1765).

<sup>4</sup> On the background of the litigation on its role in shaping patent law in the United States, see Christopher Beauchamp, *Repealing Patents*, 72 Vand. L. Rev. 647 (2019).

certain carding and spinning technology that was thought crucial to the English textile industry. In earlier litigation brought against an alleged infringer in King's Bench, Arkwright lost when the jury concluded that a defective specification invalidated his patent. But because the rejection of a suit for infringement did not revoke or repeal the patent, Arkwright was free to threaten and bring subsequent infringement suits, including a successful suit in Common Pleas in which the carding patent was upheld. Northern manufacturers, dependent on the technology, sought a *scire facias* proceeding in Chancery to settle the matter of validity once and for all. Ultimately, the jury's verdict in the proceeding revoked the Arkwright patent, thereby blocking its enforcement against everyone. The writ of *scire facias*, then, offers a paradigmatic example of the judicial provision of non-party protective relief.

The special potency of the non-party protective relief afforded by writ of *scire facias* was well understood in the United States. Consider Nathan Dane's account of the distinction between the remedial power of an action and the power of the writ of *scire facias*:

[I]f one illegally uses a patent-right to the prejudice of another [as Arkwright had allegedly done], [the victim's] usual remedy is an action; but if the wrong be such as to produce a multiplicity of actions, it is conceived a remedy may be had here, as in England, by such *scire facias*; and where a patent is prejudicial to the subject, a *scire facias* is held to be a writ of right, to repeal it.

Nathan Dane, 6 A GENERAL ABRIDGMENT AND DIGEST OF AMERICAN LAW 474 (1823). As Dane explained, the owner might illegally use a patent to threaten a party with suit and extort a licensing payment, even where a court had previously declared the patent invalid. That possibility necessitated non-party protective relief. Because, in Dane's words, a patent owner's threats could give rise to "a multiplicity of actions," *scire facias* was an appropriate remedy to repeal the offensive grant. Notably, neither Dane nor the English authorities suggested that the proceeding requires the joinder of all interested parties; instead, the suit if successful operated for the benefit of all.

## II. Revocation in Federal Patent Law

The offensive suit to cancel or repeal patents in the Patent Act of 1793 was based on English *scire facias* practice.<sup>5</sup> Section 10 of the 1793 statute (closely modeled upon section 5 of the 1790 law that it superseded<sup>6</sup>) authorized individuals to initiate an offensive suit for repeal of an offending patent by making an oath or affirmation that challenged the patent's legality. See Patent Act of 1793, ch. 11, § 6, 10, 1 Stat. at 320, 323. If the district court found ample basis, the court was to grant "a

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<sup>5</sup> Beauchamp, *supra*, at 680 ("One early organic development was that some parties, in their pleadings, began to refer to statutory repeal actions [in the 1793 Act] as *scire facias* suits.")

<sup>6</sup> Patent Act of 1790, ch. 7, § 5, 1 Stat. at 111.



rule that the patentee or patentees . . . show cause why process should not issue . . . to repeal such patents; and if sufficient cause shall not be shown to the contrary, the rule shall be made absolute, and thereupon the said judge shall order process to be issued as aforesaid, against such patentee or patentees, his, her, or their executors, administrators, or assigns.” *Id.* If the patentee failed to show sufficient cause “or if it shall appear that the patentee was not the first and true inventor, . . . judgment shall be rendered by such court for the repeal of such patent or patents.” *Id.* Section 10 resembled practice on a writ of *scire facias* in its reliance on an initial show-cause order and its provision for the repeal of the offending patent.

Contemporary courts and lawyers understood section 10’s provision for an offensive suit to repeal a patent as a vehicle for the imposition of non-party protective relief. Judge Hopkinson, sitting in Pennsylvania, explained the need for such relief by highlighting the threat posed by patent trolls who might extort licensing payments by threatening infringement litigation.

To protect the public from such impositions, this tenth section [of the Patent Act] was enacted, and gives the power to any person, interested or not in the discovery or the patent, to call upon the patentee for an examination of his right, and have it repealed, if it shall be found that he is not entitled to it. This proceeding, however, must be instituted within three years; for if the public acquiesces for that period in the claim of the patentee, it shall only be questioned by one against whom a suit is brought for a violation of it, when the defendant will always have the benefit of the defence provided for him by the sixth section of the act.

*Delano v. Scott*, 7 F. Cas. 378, 382-83 (E.D. Pa. 1835) (No. 3753) The judge’s distinction between the community-wide or “public” effect of the time-limited section 10 proceeding and the defendant-specific focus of infringement suits under section 6 confirms that the judge understood that a successful suit to repeal an offending patent would confer non-party protection.

Critics of non-party relief may argue that patent cancellation operates on a record and therefore offers indivisible relief of a kind that does not inform the debate over universal injunctions. But the federal patent laws of the 1790s did not treat judicial patent invalidation decrees in indivisible terms. As Judge Hopkinson observed, and as Chief Justice Marshall confirmed in *Grant v. Raymond*, 31 U.S. 218, 246 (1832), a federal court ruling for the defendant in a section 6 infringement proceeding need not cancel the patent or grant non-party protective relief. When the federal court went further, cancelling a patent pursuant to the section 6’s second remedial option, it provided relief to non-parties that was not strictly necessary to provide full protection to the defendant.<sup>7</sup> Similarly, a successful section 10 proceeding operating in the

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<sup>7</sup> See, e.g., *Evans v. Eaton*, 20 U.S. 356, 425 (1822) (explaining that, should the defendant provide “special notice” in an infringement suit under section 6 of the Act of 1793, an appropriate jury finding

nature of the writ of *scire facias* offered non-party protective cancellation of the offending patent. Congress thus evidently took the position that the federal courts were competent to provide party-specific relief for invalid patents and, in a proper case, to provide more sweeping non-party protective relief. The relief in question was not seen as inherently indivisible.

### III. Patent Revocation's Transition from Law to Equity

Over the course of the nineteenth century, suits for the repeal of patents that had once invoked proceedings in the nature of *scire facias* came to sound in equity. A variety of factors informed this change, including expanded statutory authority and a growing perception that suits in equity provided a more suitable litigation vehicle for the consideration of patent validity. Around the mid-nineteenth century, the switch from law to equity was complete and *scire facias* no longer played a central role in judicial cancellation of letters patent. By then, the non-party protective elements of the *scire facias* proceeding had migrated to the remedial toolkit of courts of equity.

Building on the English decision in *Attorney-General v. Vernon*, 23 Eng. Rep. 468, 470; 1 Vern. 277, 281 (1684), Chief Justice Kent's opinion in *Jackson v. Lawton*, 10 Johns. 23 (N.Y. Sup. Ct. 1813), played an important role in persuading the courts of the United States to expand the scope of equitable relief to encompass the cancellation of letters patent.<sup>8</sup> Ruling in an ejectment proceeding, Chief Justice Kent held that the defendant could not attack the legality of the plaintiff's land patent as a defense to ejectment. *Id.* at 26. Instead, such matters of record were properly contested in cancellation proceedings. *Id.* Kent understood that cancellation in England often took the form of a *scire facias* proceeding. *Id.* at 24. But Kent made clear that bills in equity were also available to private litigants for land patent challenges. *Id.* at 25. He based this conclusion both on the authority of an earlier Maryland decision and on the decision of the English High Court of Chancery in *Vernon* to sustain a bill to "set aside [letters patent] by a decree." *Id.* at 25-26.

Although this Court did not grant an equitable revocation remedy in *Polk's Lessee v. Wendal*, 13 U.S. 87, 94 (1815), a dispute over land patents, Chief Justice Marshall's opinion embracing the bill in equity for that purpose took hold.<sup>9</sup> Consider *United States v. Hughes*, 52 U.S. 552 (1850), an 1850 case in which the Supreme

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"might authorize the Court to adjudge the patent void"). *Cf. Odiorne v. Winkley*, 18 F. Cas. 581 (Story, Circuit Justice, C.C.D. Mass. 1814) (No. 10,432) (upholding jury verdict of patent invalidity in a section 6 infringement suit and entering judgment "upon the records of a vacatur of the patent").

<sup>8</sup> Better known for his work as the chancellor of New York from 1814-1823, James Kent served as chief justice of the New York Court of Judicature from 1808-1814.

<sup>9</sup> See *United States v. Stone*, 69 U.S. 525, 535 (1865) (explaining that, although in England annulling a patent "was originally done by *scire facias*," in the United States a "bill in chancery [was] found a more convenient remedy").

Court, sitting in equity, provided non-party protective relief through the cancellation of a land patent. In *Hughes*, the Attorney General brought a bill in equity on behalf of two citizens, Robert Sewall and Franklin Hudson, to challenge the land patent of David Hughes, contending that Hughes had obtained the patent through fraud. Concluding that Hughes had committed fraud, this Court first “decree[ed]” Hughes’s patent “vacated, and declared null and void.” *Id.* at 569. It then “ordered and decreed” that, “within one calendar month from the time of filing and entering the mandate,” Hughes was to “surrender” the patent to the Circuit Court for the District of Louisiana. *Id.* And the Court “further adjudged and decreed” that Hughes was “forever enjoined from prosecuting any suit in law or equity on said patent, as evidence of title.” *Id.*

To be sure, the non-party protective relief secured in *Hughes* came in the course of a suit brought by the government. But this Court did not view the government’s status as the petitioner in equity as affording it any special dispensation. To the contrary, this Court reasoned from the right of individuals to seek cancellation relief in equity to conclude that the government could invoke the same remedy:

It is manifest that, if the agents of an individual had been thus imposed on, the conveyance could be set aside because of mistake on part of such agents, and fraud on part of the second purchaser, in order that the first contract could be complied with. Nor can it be conceived why the government should stand on a different footing from any other proprietor.

*Hughes*, 52 U.S. at 568. Building on the analogy to private litigation, this Court “regretted” that the government had proceeded by an information in equity rather than a “simple bill in equity”; the information was said to have been an attempt to “assimilate[e] the proceeding to an information by the Attorney-General on behalf of the crown, in England, to repeal a patent.” *Id.* As this Court explained, private parties were entitled to equitable relief and “similar remedies may be employed by the United States as owners, that are applicable in cases of others.” *Id.*

Although *Hughes* was a land patent case, federal courts of equity came to recognize and enforce the same non-party protective elements in litigation to revoke or cancel invention patents. In *Mowry v. Whitney*, 81 U.S. 434, 440 (1871), an invention case, this Court traced the evolution in practice as it had occurred to the date of its decision:

The *scire facias* to repeal a patent was brought in chancery where the patent was of record. And though in this country the writ of *scire facias* is not in use as a chancery proceeding, the nature of the chancery jurisdiction and its mode of proceeding have established it as the appropriate tribunal for the annulling of a grant or patent from the government. This is settled so far as this court is concerned by the case of the *United States v. Stone*, in which it is said that the

bill in chancery is found a more convenient remedy. A bill of this character was also sustained in the English chancery in the case of the *Attorney-General v. Vernon*, on the ground of the equitable jurisdiction in matters of fraud. And in the case of *Jackson v. Lawton*, Ch[ief Justice] Kent says that in addition to the writ of *scire facias*, which has ceased to be applicable with us, there is another remedy by bill in the equity side of the court of chancery.

In sum, by 1871, this Court had clarified that relief previously available via *scire facias* was now offered by proceedings in equity. See Mark A. Lemley, *Why Do Juries Decide If Patents Are Valid*, 99 Va. L. Rev. 1673, 1700-02 (2013) (tracing the switch from *scire facias* to equity for patent cancellation proceedings).

Non-party protective relief continues to characterize patent litigation today. In applying the doctrine of non-mutual collateral estoppel to extend the benefits of an initial patent-claim invalidity adjudication, this Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois*, 402 U.S. 313 (1971), drew on the origins of patent cancellation. Pointing to the report of a presidential commission on the patent system, the Court approvingly cited the idea that a “final federal judicial determination declaring a patent claim invalid shall be in rem, and the cancellation of such claim shall be indicated on all patent copies subsequently distributed by the Patent Office.” *Blonder-Tongue*, 402 U.S. at 339 (quoting Recommendation XXIII, Report of the Presidential Commission on Patent Reform 38 (1966)). That calls to mind the form of relief available by proceedings in the nature of *scire facias* under the Patent Act of 1793. Today, when the United States Court of Appeals for the Federal Circuit decides the issue on appeal from a federal district court or from the U.S. Patent and Trademark Office, its judgment of invalidity will effectively cancel the patent claim in question. As with practice in the nature of a writ of *scire facias*, the court in doing so provides relief to non-parties.

Cancellation also confers non-party protection under the terms of the Smith-Leahy America Invents Act, Pub. L. No. 112-29 (2011) (codified in various sections of 35 U.S.C.), which assigns many patent claim validity issues to the Patent and Trademark Appellate Board (PTAB), an agency housed within the U.S. Patent and Trademark Office, pending review in the Federal Circuit. After an initial grant, the PTAB can assess patent claim validity through either inter-partes or post-grant review. The inter-partes review process, by far the most common, bears some resemblance to proceedings in the nature of *scire facias* under the Patent Act of 1793. For starters, any person can initiate such review. See 35 U.S.C. § 311(a). In addition, the petition for inter-partes review goes forward only after a discretionary determination (by the USPTO’s director) that the petition for review has a “reasonable likelihood” of success. See *id.* § 314(a). Finally, if the PTAB invalidates one or more of the claims in the patent it does so for all purposes, issuing and publishing a certificate to that effect. See *id.* § 318(b). Just as it did under the Patent Acts of 1790 and 1793,

invalidation of the patent claim protects non-parties from any threat of an infringement suit.

#### IV. The Lessons of History

This Court has sometimes proposed to define the scope and limits of federal equity powers by reference to the precise forms of “equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution.” *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (internal citation omitted). But *Grupo Mexicano*, a private-law dispute in federal court on the basis of diversity of citizenship, arose in a context in which the only federal interest was to provide a neutral forum for the application of non-federal law. By contrast, in cases that implicate federal interests in effective law enforcement and accountable government, this Court has repeatedly reaffirmed the availability of federal equity based on a broader historical synthesis. See, e.g., *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 U.S. 477, 491 n.2 (2010); *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015).

As Justice Scalia wrote for the Court in *Armstrong*, the “ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.” But the English precursor to which the *Armstrong* Court adverted in justifying federal equity in public law matters was not the practice of the High Court of Chancery in 1789, as *Grupo* intimated, but the practice before the common law court of King’s Bench in suits based on writs of *mandamus*, the context in which judicial review of executive action originated. See *Armstrong*, 575 U.S. at 327 (citing Louis Jaffe & Edith Henderson, *Judicial Review and the Rule of Law: Historical Origins*, 72 L.Q. Rev. 345 (1956)). See Pfander & Wentzel, *Common Law Origins*, at 1355-59. Neither *Free Enterprise* nor *Armstrong* cited *Grupo Mexicano*.

This Court should follow the path of *Armstrong* in recognizing that federal equity today can legitimately draw upon forms of judicial power that developed outside the equity side of the High Court of Chancery. One such form of adjudication, the writ of *scire facias*, led to the issuance of a judgment that revoked and annulled a governmental grant of letters patent for all purposes and thus conferred benefits and protections on non-parties to the proceeding. Following the approach taken in *Armstrong*, adjudication in the nature of the writ of *scire facias* provides historical evidence that federal courts may in a proper case legitimately quash or annul governmental action as a general matter and suspend its operation as to the whole community.

## CONCLUSION

For these reasons, the Court should resolve this case on narrow grounds and resist the invitation to invalidate all forms of non-party protective relief.

Respectfully submitted,

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